

Remarks

After entry of the present Amendment, claims 1-3, 12, and 14-31 are pending in the present application. Independent claim 1 is currently amended to include the substance of dependent claims 11 and 13 and, as such, dependent claims 11 and 13 are cancelled. Dependent claims 4-10 are currently cancelled. Claims 12 and 14-20 are also currently amended to update dependency. New dependent claims 29-31 are currently added as new claims. Support for new claims 29-31 is found throughout the application and no new matter is being introduced. With reference to the Restriction Requirement dated September 18, 2009, claims 1-3, 12, and 14-31 read on elected Species B.

Claim 26 stands rejected under 35 U.S.C. §112, second paragraph as being indefinite. Claims 1-3, 11-12, 24-25, and 27-28 stand rejected under 35 U.S.C. §102(b) as being anticipated by, or in the alternative, under 35 U.S.C. §103(a) as obvious over U.S. Patent Application Publication No. 2002/0088246 to Bureau et al. (hereinafter Bureau et al.). Claim 26 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Bureau et al. in view of JP 361006596 to Shibata et al. The Examiner indicates that claims 13-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Rejection of Claim 26 under §112, Second Paragraph

Claim 26 stands rejected under §112, second paragraph as being indefinite for reciting a broad limitation along with a narrow limitation that falls within the broad limitation. Specifically, the Examiner rejects the language, “a highly porous heat-conducting foam, particularly graphite.”

Claim 26 is currently amend to delete the term “graphite,” and this term is added to new claim 29. The Applicants respectfully assert that this amendment overcomes the rejection under §112, second paragraph.

Rejection of Independent Claim 1 under §102(b) or, in the alternative, §103(a)

As stated above, the Examiner indicates that claims 13-23 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Independent claim 1 is currently amended to incorporate allowable independent claim 13 and intervening dependent claim 11. The Applicants respectfully assert that independent claim 1 is allowable as amended.

It should be appreciated claims 11 and 13 are cancelled and incorporated into independent claim 1 merely to expedite the prosecution of the allowed claims and should not be considered an admission that these claims lack novelty.

Rejection of Independent Claim 27 under §102(b) or, in the alternative, §103(a)

As detailed on page 4 of the Office Action dated February 2, 2010, independent claim 27 stands rejected under §102(b) as being anticipated by, or in the alternative, under §103 as obvious over Bureau et al. The Applicants respectfully traverse the rejections of independent claim 27. The Applicants respectfully assert that the Office Action lacks detail and, as such, the Applicants are unsure as to the Examiner's application of Bureau et al. to independent claim 27. If the Examiner maintains this rejection, the Applicants respectfully request clarification including the use of reference numerals from Bureau et al. and/or an annotated figure from Bureau et al.

In any event, the Applicants respectfully assert that Bureau et al. fails to teach each and every element of independent claim 27 and, as such, fails to anticipate independent claim 27. For example, the Bureau et al. fails to teach "a first closed loop (BF, BC)...in which said first fluid can circulate" and "a second closed loop (BSf, BSc) in which said second fluid can circulate," as claimed in independent claim 27. Notably, the Examiner merely references Figure 1 of Bureau et al. and does not use reference numerals from Bureau et al. to identify the first and second closed loops and, as such, the Applicants are unsure as to what elements of Bureau et al. the Examiner interprets as the first and second closed loops. In any event, Figure 1 of Bureau et al. merely discloses one loop that carries a single

fluid. Valves 238 and 240 can be turned on and off to change the flow of the fluid to various components but do not create separate closed loops carrying separate fluids. As such, the Applicants respectfully assert that Bureau et al. fails to disclose “a first closed loop (BF, BC)...in which said first fluid can circulate” and “a second closed loop (BSf, BSc) in which said second fluid can circulate,” as claimed in independent claim 27. Since Bureau et al. fails to teach each and every elements of independent claim 27, the Applicants respectfully assert that independent claim 27 is novel over Bureau et al.

Further, the Applicants respectfully assert that, if the Examiner maintains the rejection of independent claim 27, then the next Office Action should be non-final. As set forth in MPEP §706.07, “Before final rejection is in order a clear issue should be developed between the examiner and applicant.” Since the Office Action did not set forth a detailed rejection, e.g., regarding the first and second closed loops, the Applicants respectfully assert that a clear issue has not been developed and respectfully assert that the next Office Action cannot finally reject independent claim 27 as being anticipated by Bureau.

Further, with respect to the rejection of claim 27 under §103(a) as being obvious over Bureau et al., the Applicants respectfully assert that a prima facie case of obviousness has not been established by the Examiner, and in any event, that independent claim 27 is non-obvious over Bureau et al.

With reference to MPEP §2141, “[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.” (emphasis added). Citing the opinion by the Supreme Court of the United States for *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007), the Board of Patent Appeals and Interferences stated in a precedential opinion that “this analysis should be made explicit.” *Ex parte Thomas J. Whalen*, Appeal 2007-4423 (emphasis added). The present rejection under §103(a) provides no articulation of the reasons why the claimed invention would have been obvious. In fact, the Examiner merely makes a conclusory statement that independent claim 27 is obvious over Bureau et al. in the alternative to being anticipated by Bureau et al. As such, the Applicants respectfully assert that the Examiner has not

established a prima facie case of obviousness. Further, the Applicants respectfully assert that independent claim 27 is non-obvious over Bureau et al. Lastly, as set forth above, since a clear issue has not been developed between the Examiner and the Applicants, the Applicants respectfully assert that the next Office Action cannot finally reject independent claim 27 as being obvious over Bureau et al.

New Dependent Claims 30 and 31

New dependent claims 30 and 31 are similar to allowed dependent claims 11 and 13, respectively. The Applicants respectfully assert, aside from the novelty and non-obviousness of independent claim 27, that new dependent claims 30 and 31 are independently novel and non-obvious.

In view of the foregoing, it is respectfully submitted that independent claims 1 and 27 and the claims that depend therefrom, are both novel and non-obvious such that these claims are in condition for allowance, which allowance is respectfully requested. If any issue regarding the allowability of any of the pending claims could be readily resolved, or if other action could be taken to further advance prosecution, such as an Examiner's Amendment, it is respectfully requested that the Examiner telephone the undersigned in this regard.

Although no fees are believed to be due at this time, the Commissioner is authorized to charge our Deposit Account No. 08-2789 in the name of Howard & Howard Attorneys PLLC for any fees or credit the account for any overpayment for this matter.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

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